HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1107 (M/S) 2003

(Old No. 14711 of 1997)

State of U.P through Deputy
Director Sericulture, Dehradun & others
Versus.

Sukhpal Singh S/o Sri Ram Diya and others.

Approved for reporting.

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~~Not approved for reporting~~

Date 6.12.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1107 (M/S) of 2003
(Old No. 14711 of 1997)

State of U.P through Deputy
Director Sericulture, Dehradun
(2) District Sericulture Officer,
Pathari Haridwar ….. Petitioners.

Vs

(1) Sukhpal Singh Sri
Ram Diya R/o village Ikkar,
Post ambuwala District Haridwar
(3) Presiding officer, Labour Court
U.P. Dehradun. …Respondents.

Hon'ble Rajesh Tandon, J.

Heard Shri C.K. Shrama Learned Counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for the following reliefs:-

(1) Issue a writ, order or direction in the nature of certiorari quashing the impugned award dt. 3.8.96 and also a impugned order dt. 7-1-1997 (Annexure No.6 and 5) passed by the respondent no.2 to the writ petition.

(2) Issue any other writ, order or direction which this Hon'ble Court may deem fit and case;

(3) To award the costs to the petitioner to the petitioners..

Brief facts giving rise to the present writ petition are that following dispute was referred for adjudication before the Labour court:-

''क्या सेवायोजको द्वारा अपने मालिक श्री सुखालाल सिंह पुत्र श्री रामडीया की सेवायें दिनांक 31.5.95 से समाप्त किया जाना उचित तथा/ आनुतोष (रिलीफ) जाने का अधिकारी है, तथा अन्य किस विवरण व तिथि सहित ।''

Respondent no. 1 in his written statement has stated that he has wrongly been terminated from the service as he is working as a mali since 1982. He was employed as a peon/Gardener but his services have been terminated on 31-5-1995 without assigning any reasons.

The petitioners have further stated in paragraph 2 of the written statement that he has completed 240 days and as such his termination order was illgal.

The labour court after considering the entire evidence has recorded the findings that the petitioners have completed 240 days in the calendar month and as such he is entitled for reinstatement and the termination of his service by the order dt. 31-5-1995 was against the provisions of law.

The labour court has also directed for restatement with back wages. The findings are quote below;-

''उपरोक्त से स्पष्ट है कि वादी श्रमिक व 12 कैलेन्डर महीनों में नियेाजित रहा और इस अवधि में उसे 240 दिन से अधिक हो जाते है जबकि कार्य दिवसों की गणना सें साप्ताहिक अवकाष के दिन भी गिने जाते है।''

A Counter Affidavit has been filed by the respondent no. 1. It has been stated in paragraph 4 and 6 of the counter affidavit that he has completed 240 days in every calendar year. It was further stated

that laboru court had directed the petitioners to produce the record /muster roll on 23-7-1996 but they have filed the muster roll only for two months and such the labour court has heard the final arguments of both the parties. Relevant paragraphs 4 and 6 are quoted below:-

<u>Paragraph 4-</u> ***" That the contents of paragraph no. 3 of the writ petition are totally false and baseless and it is stated that deponent workman was employed as peon/ mali in the petitioner establishment since 1982 and had worked till his services were terminated, i.e. 31-5-1995 and had worked more than 240 days in every calendar year."***

<u>Paragraph 6-</u> ***" That the contents of paragraph no. 9 of the writ petition are not correct and it is stated that on 15-7-1996 the labour court had directed the petitioner to produce the record/muster roll on 23-7-1996 and on this date they have filed muster roll for the two months and muster roll for the ret period the petitioner sought adjournment on the cost of Rs.60/- and further fixed the date 3-8-96 . It is further stated that on 3-8-96 the petitioner neither produced any record nor sought any adjournment and argued the matter finally. The albour court heard the final argument of both the parties and give its award."***

The findings recorded by the labour court so far as the reinstatement of the respondent No. 1 requires no interference as the labour court has recorded the findings that the respondent no. 1 has worked for more than 240 days in the calendar year. The findings of the labour court are quoted below:-

'' उभरी वत से स्प्ष्ट है कि वादी श्रामिक व 12 कैलेन्डर महीनो में नियोजित रखा और इस अवधि में उसे सबसे 240 दिन से अधिक हो जाता है जबकि कार्य दिवसों की गणना में साप्ताहिक अवकाष व राष्ट्रीय अवकाष के दिन भी गिने जाते है।

The findings therefore with regard to the reinstatement of the respondents no.1 requires no interference under Article 226 of the Constitution of Indian and are confirmed.

However the petitioners have stated that the findings of the labour court with regard to back wages are not correct in as much as the labour court should have awarded only 50% of the back wages.

It is well established that so far as the back wages are concerned the same is within discretion of the labour court and there is no straight jacket formula.

In P.G.I of M.E. and Research Chandigarh Vs. Raj Kumar AIR 2001 SC 479. The observations are quoted below:_

Paragraph- 12 ***" Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works Pvt. Ltd. (AIR 1979 SC 75: 1978 Lab IC 1667) (supra) be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only."***

Paragraph- 13 ***" Strong reliance has also been placed on the decision of this Court in Rattan Singh V. Union of India, 1997 (11) SCC 396, wherein this Court observed that protection of Section 25(f) cannot be denied to a workman on the ground that he was a daily rated worker, having regard to the factum that the said daily rated worker had continuously worked for more that 240 days in a year. The Industrial jurisprudence was developed in the country also accepts the same as a true statutory intent in the matter of introduction of the Industrial Disputes Act in the statute book.***

Significantly, however, in Rattan Singh's case (1997) (11) SCC (396) (supra) this Court thought it fit by reason of contextual facts to direct payment of consolidated sum of Rs. 25,000/- in lieu of back wages and reinstatement-the reason being the factum of the time lag between the date of termination and the date of order. It is well settled that cases are to be decided on the basis of its peculiar facts and circumstances and no generalized principle can be deduced but fact shall have to be consideration in its true and proper perspective."

<u>Paragraph- 14"</u> The issue as raised in the matter of back ages has been dealt with by t he Labour Court in the manner as above having read to the facts and circumstances of the matter in the issue upon exercise of its discretion and obviously in manner which cannot but be judicious in nature. In the event however the High Court's interference is sought for there exists an obligation on the part of the on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunals, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable. There ought to be available in the judgment itself a finding about the perversity or the erroneous approach of the Labour Court and it is only upon recording therewith the High Corut has the authority to interfere. Unfortunately, the High Court did not feel it expedient to record any reason far less any appreciable reason before denouncing the judgment."

In India Railway Construction C. Ltd. Vs. Ajay Kumar AIR SC 1843. The observations of the Apex Court are quoted below:-

In P.G.I of Medical Education and research, Chandigarh Vs. Raj Kumar 2001 (2) SCC54), this court found fault with the High Court in setting aside the award of the Labour Court which

restricted the backwages to 60% and directing payment of full backwages. It was observed thus:

"The Labour Court being the final Court of facts came to a conclusion that payment of 60^ was wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspect of the matter and there is an existing limitation on the High Court to that effect."

Paragraph- 32 " Again at paragraph 12, this Court observed:

" Payment of backwages having a discretionary element involved in it has to be dealt with in the facts and circumstances of each case and no strait-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of backwages in its entirety. (See Hindustan Motors Ltd. Vs Tapan Kumar Bhattacharya and another, 2002AIR SCW 3008)."

In the facts and circumstances so far as the back ages are concerned, the same is modified to the extent of 60%.

The writ petition partly succeeds so far as the back wages to the extent of the 60% is concerned, however, the order passed by the labour court to the extent of reinstatement of respondent no. 1 is confirmed.

In view of the above, writ petition is partly allowed. There will be no order as to costs.

(Rajesh Tandon, J.)

Dt. 6.12.2003

Mohit